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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,601	03/29/2004	Siegfried Fischer	37105.0052	2710

26712 7590 09/19/2005

HODGSON RUSS LLP
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BUFFALO, NY 14203-2391

EXAMINER

LANDRUM, EDWARD F

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,601

Applicant(s)

FISCHER, SIEGFRIED

Examiner

Edward F. Landrum

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/29/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because of the term "Fig. 1" located below the abstract. Please delete the term from the abstract. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metzner et al (U.S Patent No. 5,964,138) in view of Kindel et al (U.S Patent No. 4,221,146).

Regarding claims 1-5, 7, and 9, Metzner teaches (Col. 2, lines 13-25) a knife holder (1) for a cutting knife (2) of a microtome having a knife-edge (16), and a pressure plate (6) for locking the cutting knife (2) in the knife holder (1) .

Regarding claims 1-5, 7, and 9, Kindel teaches a U-shaped frame used as a trough (1), for use with a microtome blade, having two parallel, wedge shaped sides (8 and 7). The trough is made to attach to the microtome blade and form a fluid seal between the blade and the trough (Col.1 lines 5-57).

It would have been obvious to have modified Metzner to incorporate the teachings of Kindel to create a knife holder for a microtome blade, having a trough on the pressure plate to catch any cut material and prevent the stretching or rolling of the

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cut material. A trough permanently attached to the pressure plate would alleviate any worries a user had about attaching the trough correctly to the pressure plate and potentially creating a bad seal or contaminating the specimen. A trough detachably mounted to the pressure plate would make sanitizing the plate trough much easier, and would allow the user to use add a new trough, if the original trough broke, without replacing the entire knife holding apparatus.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Metzner in view of Kindel in further view of Neymeyr (U.S Patent No. 6,058,824).

Metzner and Kindel teach all of the elements of the current invention as stated above except the use of magnets for the purpose of mounting the trough on the pressure plate.

Neymeyr teaches (Col. 3, lines 10-22) a cutter holder (1) for microtome cutters which uses a magnet (10) to situate the cutter (5) correctly in the clamping mechanism before clamping the cutter.

It would have been obvious to modify the modified device of Metzner to incorporate the teachings of Neymeyr to provide a magnetic means to attach the trough to the pressure plate in order to allow a user to have both hands free and away from the knife blade while permanently attaching the trough to the pressure plate. The use of magnets would make attaching the trough safer and easier, because the magnets would eliminate the need of the user trying to find the correct location for the trough and then holding it in place with their hands while also trying to affix it to the pressure plate.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Metzner in view of Kindel in further view of Heid (U.S Publication No. 2001/0003938).

Metzner and Kindel teach all of the elements of the current invention as stated above except the use of a pivotably mounted blade guard.

Heid teaches (Paragraph 31; also see Figure 1) the use of a pivotably mounted blade guard (10 and 11) attached to a knife holder.

It would have been obvious to have modified the modified device of Metzner to incorporate the teachings of Heid to create a safer cutting apparatus by incorporating a pivotable blade guard into the knife holder.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Metzner '278 (U.S Patent No. 5,669,278), and Berleth et al (U.S Patent No. 5,851,213) teach a blade clamping devices. Martinelli (U.S Patent No. 3,225,639), Goodman (U.S Patent No. 5,551,326), and Converse (U.S Design Patent No. 251,259) teach microtome troughs. Holbl et al (U.S Patent No. 5,161,446) teaches a pivotable blade guard. McCormick (U.S Patent No. 3,190,164), and Zeytoonian (U.S Patent No. 3,227,020) teach the use of magnets with a microtome.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EFL 
9/15/2005


Allan N. Shoap
Supervisory Patent Examiner
Group 3700